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Office of Management and Budget	PACKAGE (S)
Washington, D. C. 20503	OTHER
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justice information	COURIER'S INITIALS
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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Executive Registry

75-3961

FROM:

Acting Legislative Counsel  
7D49

EXTENSION

6121

NO.

DATE  
27 June 1975

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Director

4/27

Noted by  
JCL  
27/6/75

If you approve, we intend to send the attached to OMB, the response to its request for our views on a Department of Justice draft bill concerning the dissemination and use of criminal justice information. This response has been coordinated with OGC, D/OS, and DDO.

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WPRB

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Acting Legislative Counsel

An excellent letter ok

27 JUN 1975

Mr. James M. Frey, Assistant Director  
for Legislative Reference  
Office of Management and Budget  
Washington, D. C. 20503

Attention: Mr. William V. Skidmore

Dear Mr. Skidmore:

This is in response to your request for our views on the Department of Justice's draft bill concerning the dissemination and use of criminal justice information. The Central Intelligence Agency is strongly committed to the underlying objective of the proposed legislation which is to protect the right of privacy of citizens of the United States.

It is the position of this Agency that the Central Intelligence Agency is not a "criminal justice agency." However, we believe that the definition of "criminal justice agency" in the draft bill should be clarified to avoid any question of this fact in that legislation. If the Central Intelligence Agency were considered to be within that definition, it would be subject to requirements in conflict with its statutory charter. As a non-criminal justice agency, however, the Agency's access to important foreign intelligence information would be seriously impaired by the bill.

It has been ascertained in discussions with the Department of Justice that it was not intended to characterize the Central Intelligence Agency as a "criminal justice agency." This intent is consistent with and indeed mandated by the proscription of section 102(d)(3) of the National Security Act of 1947:

... That the Agency shall have no police,  
subpoena, law-enforcement powers, or internal-  
security functions ...

The Central Intelligence Agency's scope of authority is limited to foreign intelligence matters; it is definitely not a criminal justice agency.

There is, however, considerable ambiguity in the definition of "criminal justice agency" in section 102(6) of the bill. For instance, while the Agency's mission is not the detection of criminal offenses as such, foreign intelligence information sometimes has a bearing on criminal conduct, e.g., international narcotics trafficking or foreign terrorist activities. Thus, the language of



sections 102(5) and 102(6) could give rise to the argument that this Agency is a "criminal justice agency" to the extent that it obtains information relating to the "detection of ... criminal offenses." I strongly recommend that the draft be amended to make clear that the Central Intelligence Agency is not a "criminal justice agency." (Section I of the attached memorandum discusses the necessity for this clarification in more detail.)

While the Central Intelligence Agency is not to be considered a criminal justice agency, as a non-criminal justice agency under the bill it would be confronted with requirements which could impinge upon its essential responsibilities by barring Agency access to important foreign intelligence information.

The dissemination of foreign intelligence is a principal statutory function of the Central Intelligence Agency. Section 102(d)(3) of the National Security Act of 1947 imposes on the Agency a duty

... to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities ...

Moreover, section 102(e) of the National Security Act of 1947 provides:

... To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government ... relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies of the Government ... shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination ...

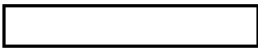
Certain provisions of the draft bill would impinge on this responsibility by preventing the Agency from obtaining foreign intelligence information in cases where such information includes items defined in section 102 as "criminal justice information." For example, the limitations in sections 204, 206(a), and 201(d) would preclude Agency receipt of information held by foreign and domestic criminal justice agencies concerning the criminal activities of a foreign terrorist. I recommend that the draft be appropriately modified to take into account the occasional necessity of disseminating to foreign intelligence agencies material which section 102 defines as "criminal justice information" and the need to protect such information in their possession. (Section II of the attached memorandum discusses in greater detail the problems that the Agency would be confronted with under the draft bill as a non-criminal justice agency.)

I would like to propose for your consideration the amendments to the draft bill set forth in section III of the attached memorandum. I believe they would satisfy the above-mentioned considerations while preserving the intent and objectives of the legislation.

Sincerely,

STATINTLp

**SIGNED**

  
Acting Legislative Counsel

Distribution:

Orig - Addressee  
1 - OMB Liaison  
1 - HR 61 file  
1 - OLC Chrono  
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OLC: WPB: cg (26 Jun 75)

MEMORANDUM

SUBJECT: Department of Justice Draft Bill on Criminal Justice Information

Section I

1. The regulatory provisions proposed in the draft bill would apply to certain kinds of information collected or compiled by "criminal justice agencies." These provisions would apparently extend to information from foreign sources, concerning foreign citizens and relating to conduct made criminal under foreign laws. The term "criminal justice agency" is defined in section 102(6), inter alia, as an agency which performs "criminal justice activities." The term "criminal justice" is defined in section 102(5) as referring "to the activities of a criminal justice agency relating to protection against, detection of, or investigation of criminal offenses ...." (emphasis added).

2. The foreign intelligence mission of the Central Intelligence Agency is not directed at the detection of criminal offenses as such; yet in its pursuit, information is sometimes obtained which has a bearing on criminal conduct, such as international narcotics trafficking or foreign terrorist activities. The definitions of "criminal justice" and "criminal justice agency" in sections 102(5) and 102(6) respectively are ambiguous and could give rise to an argument that the Central Intelligence Agency is a criminal justice agency to the extent that it gathers information relating to the "detection of ... criminal offenses" in connection with such matters.

3. The Central Intelligence Agency is not a criminal justice agency. It was established by the National Security Act of 1947 to provide the President and his policy advisers with foreign intelligence information. In addition, that Act provides:

... That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions ... (50 U.S.C. 403).

4. There are at least three reasons why the Central Intelligence Agency is not a "criminal justice agency."

(a) The designation of the Central Intelligence Agency as a "criminal justice agency" would be contrary to existing law and efforts within Congress and the Executive branch to insure that all legislation clearly states that this Agency has no law-enforcement or criminal justice purpose.

(b) As a "criminal justice agency," the Central Intelligence Agency would be subject to the regulatory provisions of Title 2 of the draft concerning the collection, dissemination, and use of criminal justice information by criminal justice agencies and the provisions for the administration and enforcement of these provisions by the Commission created in Title 3. Some of these provisions would conflict with the Director's statutory obligation to protect Intelligence Sources and Methods (50 U.S.C. 403); with the Agency's principal statutory duty to correlate and evaluate foreign intelligence and to provide for its appropriate dissemination within the Government using where appropriate existing agencies and facilities (50 U.S.C. 403); and with the Agency's general exemption from provisions of any other law which would require the publication or disclosure of Agency organization, functions, or personnel (50 U.S.C. 403). Among the provisions which raise potential conflicts are the following:

--Sections 204 and 206(a), which provide for the exchange, dissemination and use of criminal justice information for non-criminal justice purposes, would preclude the dissemination of foreign intelligence information to appropriate domestic and foreign consumers where such intelligence contained "criminal justice information."

--Section 204(c), which requires non-criminal justice recipients of arrest record or criminal record information to notify the subject individual, could result in alerting foreign intelligence subjects of the Agency's interest in their activities.

--Section 208, which grants the subject individual (presumably including foreign citizens) access to arrest and criminal record information for personal inspection, could under given circumstances result in betraying this Agency's interest in a foreign intelligence subject or in compromising a sensitive liaison relationship with a foreign service.

--Section 209(b)(2), which would require the identifying and recording of the personnel with access to criminal justice intelligence information within an agency to which such information has been disseminated, could result in disclosing the identities of covert Agency officers.

--Section 302(a)(3), which empowers the "Commission on Criminal Justice Information" to investigate allegations of non-compliance with the Act, could result in Commission access to the most sensitive Intelligence Sources and Methods at the prompting of each allegation of non-compliance.

--Section 302(a)(4) would require the Agency to provide the Commission all information necessary to compile a public directory of "criminal justice information systems" identifying their nature, purpose, and scope. This section could result in the compromise of Intelligence Sources and Methods to the extent that it requires disclosure of Agency holdings on, or interest in, a foreign intelligence subject.

(c) Application to the Central Intelligence Agency of the requirements of Title 2 whenever foreign intelligence information pertains to criminal conduct would undermine the Agency's essential function of gathering, evaluating, correlating, and disseminating foreign positive intelligence in support of the foreign policy-making process. In order to comply with the Act, the Agency would be required to analyze foreign intelligence information against criminal law standards and arrange its information systems and the pattern of intra-Agency intelligence dissemination according to criminal justice values which may be irrelevant to and indeed impede the foreign intelligence process.

5. It is strongly recommended that section 102(5) of the draft bill be amended to make clear that foreign intelligence collection is not a criminal justice activity.

## Section II

1. The Central Intelligence Agency is not a criminal justice agency. As a non-criminal justice agency, however, the Agency's access to important foreign intelligence information would be seriously impaired by the draft bill.

2. The Central Intelligence Agency has no general interest in obtaining criminal justice information per se. In support of the Director's position as the President's principal foreign intelligence advisor, this Agency must have access to information characterized in the draft bill as "criminal justice information" where it pertains to a foreign intelligence subject. Indeed, section 102(e) of the National Security Act of 1947 provides:

... To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government ... relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies of the Government ... shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination ...

Moreover, section 102(d)(3) of the National Security Act of 1947 imposes on the Agency the duty

... to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities ....

It is conceivable under given circumstances that the Agency would require access to any one of the five classes of information characterized as "criminal justice information" in the bill. This is especially true because each class could include information from foreign sources, concerning foreign citizens and relating to conduct made criminal under foreign laws. The limitations in sections 204 and 206(a) on the collection, dissemination, and use of criminal justice information for non-criminal justice purposes would preclude Agency receipt of foreign intelligence information held by domestic agencies and, by implication of section 201(d), held by foreign governments where such information falls within the definition of "criminal justice information" in the bill. Such restrictions would impinge upon the Agency's statutory responsibilities referred to above.

3. It is noted that section 205(b) would permit non-criminal justice agencies to use criminal justice information in screening applicants or for approving or reviewing security clearances. The Central Intelligence Agency may also wish to obtain criminal justice information on individuals who are being considered as possible intelligence sources or for operational purposes without initially notifying the individuals under consideration.

4. In those cases where the Agency would be able to obtain criminal justice information under sections 204(a) or (b), it would be required to notify the subject of such records under section 204(c). This notification could result in betrayal of Agency interest in a foreign intelligence subject.

5. It is strongly recommended that the draft bill be appropriately modified to take into account not only the need for material defined in the bill as "criminal

justice information" by foreign intelligence agencies, but also the need to protect such information in their possession and in some cases protect the fact that they have sought it or have it.

### Section III

1. It is believed that the suggested amendments below would satisfy the considerations and statutory conflicts referred to in sections I and II of this memorandum, while preserving the intent and objectives of the legislation.

2. Proposed Amendment to H. R. 61:

(a) Strike section 102(5) and insert in lieu thereof the following:

--Section 102(5) "Criminal justice" refers to the activities of a criminal justice agency relating to protection against, detection of, or investigations of criminal offenses as such, or to the apprehension, detention, pretrial release, posttrial release, prosecution, defense, correctional supervision or rehabilitation of accused persons or criminal offenders, adjudication of a charge, or processing requests for executive clemency, but shall not refer to foreign intelligence collection activities where undertaken by an agency of the United States authorized to conduct such activities.

(b) Insert after section 204(i) the following new section:

(j) In the interests of promoting all-sources intelligence production, and in order further to implement sections 102(d)(3) and 102(e) of the National Security Act, as amended, information defined in section 102 of this Act as "criminal justice information" may be made available to the Director of Central Intelligence as directed by the National Security Council, where necessary for foreign intelligence purposes.

(c) Insert after section 103(b)(8) the following new section:

(9) information relating to foreign intelligence sources and methods designated for protection from unauthorized disclosure pursuant to 50 U.S.C. 403.

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

May 13, 1975

LEGISLATIVE REFERRAL MEMORANDUM

To: Legislative Liaison Officer

Dept. of Health, Education & Welfare	National Security Council
Civil Service Commission	Dept. of State
Dept. of Defense	Small Business Administration
Dept. of the Treasury	The Domestic Council Cte. on the
Central Intelligence Agency	Right of Privacy (Mr. Metz)

Subject: Justice's draft bill "To provide for the security, accuracy and confidentiality of criminal justice information and to protect the privacy of individuals to whom such information relates, and for other purposes."

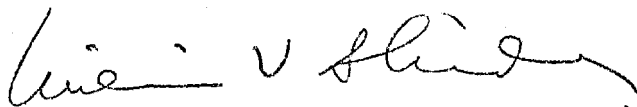
The Office of Management and Budget would appreciate receiving the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

( ) To permit expeditious handling, it is requested that your reply be made within 30 days.

(xxx) Special circumstances require priority treatment and accordingly your views are requested by

JUNE 3, 1975

Questions should be referred to Jim Purcell (395-4516 ) or to Bill Skidmore (395-4870 ), the legislative analyst in this office.

  
William V. Skidmore for  
Assistant Director for  
Legislative Reference

Enclosures

bfb

cc: Messrs. Parsons, Buchen, Marsh, Casselman, Bedell



Office of the Attorney General  
Washington, D.C. 20530

NOV 12 1974

Honorable James O. Eastland  
President Pro Tempore  
United States Senate  
Washington, D.C. 20510

Dear Mr. President Pro Tempore:

Enclosed for your consideration and appropriate reference is the proposal, "Criminal Justice Information Control and Protection of Privacy Act of 1974."

This proposal would regulate the exchange of criminal justice information among criminal justice agencies and the dissemination of such information for purposes not related to criminal justice. The restrictions in the bill would apply to federal agencies, agencies engaged in the interstate exchange of information, and state and local agencies receiving federal funds or services. Individuals would be guaranteed a right of access to their criminal records and the opportunity to correct erroneous records. In addition, a civil action is authorized against any criminal justice agency which fails to comply with the requirements of the bill. A criminal penalty would be imposed on those abusing information obtained in their official capacity. A Commission on Criminal Justice Information, representative of the federal government, the states, and the public at large, would be established to monitor compliance with the provisions of the bill.

For several years this Department has been concerned with the privacy implications incident to the exchange, dissemination and use of criminal justice information. That the Congress shares this concern is evident from the number of privacy bills introduced in the Ninety-Third Congress and the hearings conducted by the appropriate House and Senate Committees.

Ref 1035

In February 1974, this Department submitted to the Congress a Departmental proposal related to the privacy of criminal justice information which was introduced as S. 2964. The enclosed bill is an Administration substitute for the earlier Department of Justice proposal. It has been developed through discussions with the Congress, Executive agencies and state and local officials.

I respectfully urge that the proposed "Criminal Justice Information Control and Protection of Privacy Act of 1974" be enacted without unnecessary delay.

The Office of Management and Budget has advised that there is no objection to the submission of this proposal and that enactment would be consistent with the Administration's objectives.

Sincerely,

Attorney General

## SECTION-BY-SECTION ANALYSIS

The Criminal Justice Information Control and Protection of Privacy Act of 1974 is designed to provide minimum standards for the exchange of criminal justice information in order to ensure the accuracy and completeness of the information and to protect the rights of privacy of individuals who are the subjects of that information.

Section 101 contains the findings and states the basis for congressional action. It recognizes the necessity of exchanges of information among criminal justice agencies, but notes the potential for infringement of individual rights if the information itself is inaccurate or incomplete, or it is exchanged in an irresponsible manner. Acknowledging the primary role of the States, it nevertheless emphasizes the interconnected role of federal and State criminal justice information systems. It relies on the power of Congress to regulate interstate commerce in information and to impose restrictions on State and local criminal justice agencies receiving federal funds or other benefits.

Section 102 defines some of the key terms used in the bill, although not all terms are specifically defined.

"Arrest record information" is defined to include only that data on a typical "rap sheet" which indicates an arrest or initiation of charges but does not show the disposition of those charges.

"Automated" is defined as the utilization of computers or data processing equipment. No precise lines are drawn between fully manual, semi-automated and fully automated systems. This is left to individual agency regulations and procedures based on the particular characteristics of the system covered.

"Correctional and release information" is defined to include reports prepared on an individual at various stages of the criminal justice process from bail to parole. It includes medical and psychiatric reports as well as the more typical correctional data.

"Criminal record information" is defined as that "rap sheet" data which shows a disposition of charges. Thus, "arrest record information" and "criminal record information" are mutually exclusive terms distinguished by the presence or absence of dispositional information.

"Criminal justice" is defined to include the whole range of functions concerned with crime, from protective measures to prevent the commission of crimes through the rehabilitation of convicted persons.

"Criminal justice agency" includes police, prosecutors, courts and corrections as well as a number of auxiliary services performed by governmental agencies. It includes not only those governmental units, such as police departments or district attorneys' offices, whose major function is

criminal justice, but also subunits of agencies which perform criminal justice functions. Thus, the Criminal Section of the Civil Rights Division of the U.S. Department of Justice would be a "criminal justice agency." Similarly, the Antitrust Division of the Department of Justice or an Inspector General's Office which is conducting a criminal investigation in a particular case would be a "criminal justice agency" for purposes of that case even if its primary function is civil in nature. Agency is not used in any rigid sense. An "organized crime strike force" composed of members of various agencies would nevertheless be a "criminal justice agency" within the meaning of the bill.

"Criminal justice information" is the all-encompassing term for the various types of information defined separately -- arrest record information, criminal record information, criminal intelligence and investigative information and correctional and release information.

"Criminal justice intelligence information" includes information collected to anticipate or monitor possible criminal activity as distinguished from the investigation of specific criminal acts which have already occurred.

"Criminal justice investigative information" is that data compiled in determining who committed a specific crime and compiling evidence to prove guilt.

"Disposition" is defined to include all actions which might terminate a criminal proceeding at any stage beginning from the time of arrest. It also includes indefinite

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postponements of charges based on pretrial diversion or incompetence to stand trial. The terms used are intended to be descriptive of various actions which might, in different states, be listed in different terms; they are not words of art.

"Executive Order" is limited to those actions of a Chief Executive which, under existing authorities, have the force of law. It does not confer any power to issue executive orders where that power does not already exist. Such orders must be in some permanent, published form; a memorandum from a Governor to a Chief of Police which is not publically available would not be encompassed in the definition.

"Law enforcement agency" is defined with reference to agencies on whom the arrest power has been conferred by law. While in some states that may include prosecutors or others, the term is to be normally understood as referring to those performing police functions.

"State" is defined broadly to include the District of Columbia, Puerto Rico and the territories as well as the fifty States.

Section 103 sets forth the coverage of the bill. Subsection (a) specifies that all federal criminal justice agencies are covered and those State or local agencies which are funded in whole or in part by the federal government. In addition, criminal justice agencies exchanging interstate

information are covered as well as all agencies which exchange information with federal agencies, federally-funded State or local agencies, or interstate. In the latter case, the bill applies only to the extent of the exchange. Thus, a police department which maintains numerous records of its own and also exchanges some information with the FBI must comply with the bill in the handling of information sent to the FBI or received from it, but is not obligated to comply with the bill with respect to information which it collects and uses solely within the department.

Subsection (b) excludes certain types of information from the application of the bill. Public information such as court opinions, court proceedings and police blotters remain public and are not subject to the restrictions in the bill. Motor vehicle or pilot license registries which are maintained for licensing purposes by departments of transportation, motor vehicles or similar licensing agencies are not subject to the restrictions in the bill. However, records of traffic offenses, such as manslaughter or drunk driving which are maintained by criminal justice agencies remain subject to the bill.

Military justice records remaining in the Department of Defense are exempt from the bill but if "absent without leave" or other military justice information is transferred to a federal or State agency other than the Defense Department it becomes subject to the bill. Similarly, criminal justice information exchanged with the Department of Defense is

Crime Statistics, are not subject to the bill since individual offenders are not identified.

Announcements of executive clemency are exempted from the bill and may, therefore, disclose the names of persons pardoned and the underlying offense for which they were pardoned.

Intelligence or investigative information which the President has determined must be kept secret to protect the national defense or to advance foreign policy, such as matters classified pursuant to an Executive Order, is exempt from the bill. Compare 5 U.S.C. 552(b)(1).

Title II of the bill specifies the basic restrictions on the exchange, dissemination and use of criminal justice information and imposes certain obligations on criminal justice agencies.

Section 201(a) imposes the basic obligation on all criminal justice agencies covered by the bill to comply with its provisions. It requires that each agency issue published regulations, after compliance with formal rule-making procedures. In the case of federal agencies this would, of course, require formal rulemaking under the Administrative Procedure Act, 5 U.S.C. 551 et seq. The regulations must identify the information systems maintained, impose an affirmative obligation to comply with the provisions of the bill and with the regulations and procedures which implement it, specify the limits on dissemination, exchange and use of information under the provisions of the bill,

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other applicable laws, and regulations, and provide  
administrative sanctions for noncompliance.

In addition to the public regulations, subsection (b) requires each agency to adopt more detailed internal operating procedures to achieve certain goals. Since these procedures may specify security precautions in some detail, they would not be available to the public. The procedures must indicate the mechanism to be used within the agency to prevent unauthorized access to information or the dissemination to unauthorized agencies or individuals. Where appropriate, the procedures must also restrict the dissemination of correctional and release information, limiting it to criminal justice agencies, agencies entitled to receive it for employment purposes pursuant to section 205, individuals assisting in the rehabilitation of individuals as permitted in section 206, and the individual himself. In the case of the individual, he is authorized to receive correctional and release information only to the extent permitted by other statutes or by court rule or court order. Thus, a federal prisoner would not have automatic access to a pre-sentence report in his correctional file unless the court authorized access under the Federal Rules of Criminal Procedure.

Subsection (c) addresses the specific problem of pre-arrest use of arrest records which show no disposition of the earlier charges. It requires agencies to adopt procedures to prevent improper use of the arrest information

in these circumstance. The subsection merely underscores existing law, namely, that a prior arrest, standing alone, does not provide probable cause for a subsequent arrest. It is not intended to add or detract from the present authority of law enforcement officers to detain or arrest suspected persons. Where arrest record information is obtained from another criminal justice agency in this pre-arrest situation, records of that exchange (either written or on computer tape) must be maintained for three years by the agency receiving the arrest record. Periodic audit of these records is required to ensure that the arrest record information is not being used improperly. While it was not considered feasible to require a similar audit trail for arrest records used within the agency maintaining them, the agency is under an obligation to adopt some affirmative measures, such as training programs, directives, or other appropriate procedures which are designed to prevent abuse.

Subsection (d) requires that information originally obtained from a foreign government but included in a criminal justice information system subject to the bill be handled in the same manner as information generated within the United States. The bill does not prohibit exchanges of criminal justice information with foreign governments or international organizations either pursuant to treaties or agreements or on an ad hoc basis. It requires, however, that the agency in the United States undertake to see that the foreign agency

receiving the information uses it in a manner consistent with the principles of the bill.

Section 202 permits the use of wanted person information for any criminal justice purpose and the use of identification information for any legitimate purpose. Thus, wanted posters may be published and posted, mug shots may be shown to potential witnesses, and fingerprints may be used to identify crash victims. However, a fingerprint card which contains arrest record information may be exchanged or disseminated only under the same procedures as other arrest record information. The section also explains that the use of automated fugitive or stolen property files, such as those maintained by the NCIC, is not restricted by the limitations on direct access to automated systems.

Section 203 of the bill deals only with automated systems. It requires that exchanges between agencies by means of data processing equipment be governed by a formal written agreement specifying security arrangements and similar matters necessary to protect the information. Within an agency procedures must be adopted to ensure that arrest record information and criminal record information in a computer is normally accessed only by a specific identifier. However, it is recognized that there may be instances in which this is not always possible. The agency should specify in its procedures those circumstances in which a specific identifier is not feasible. Special precautions are required in connection with remote terminals in patrol cars or carried

by patrol officers. Accordingly, a specific audit trail is required to prevent abuse of automated information by patrol units.

Section 204(a) permits the dissemination of criminal record information to noncriminal justice agencies in the circumstances authorized by the bill, such as employment in certain agencies, and where authorized by some other federal or state statute or executive order. For example, a criminal justice agency could make criminal record information available to a school board if there is an appropriate statute or the Governor issues an Executive Order to this effect. The bill does not authorize this directly, however; the action of the politically responsible officials at the State level is required.

Section 204(b) permits a noncriminal justice agency, authorized by statute or executive order, to obtain arrest record information if the individual arrested has been formally charged and the charge was filed within twelve months of the date the information was requested or there is affirmative evidence indicating that the charge is still pending after that time. Older arrest information that does not show a disposition would not be available unless the statute authorizing access states specifically that access is permitted regardless of the age of the record. Any arrest record information obtained by a noncriminal justice agency must be used only for the purpose for which it was

originally obtained. Thus, an arrest record of an individual obtained for employment screening could not be used to deny the individual a license, or revoke a license. An arrest record obtained by a noncriminal justice agency may be retained in its files only so long as is necessary to accomplish the original purpose, e.g., the making of an employment decision. Thereafter it must be returned to the agency from which it was obtained or destroyed. Should the same record be required at a later time, it can be obtained by a new request to the criminal justice agency.

A noncriminal justice agency entitled to obtain arrest record or criminal record information has a duty to put the individual on notice that this type of information about him may be requested. Individual notice in each instance is not required so long as the employment application form or license application form itself indicates that this type of information may be requested concerning the individual. Agencies which have authority to make continuing checks on the records of their employees or others must find some mechanism, such as an employee bulletin, to ensure that all those whose records may be obtained are aware of that fact.

Section 204(d) contains a specific statutory authorization for the Immigration and Naturalization Service and the Department of State to obtain the criminal justice information about individuals that is necessary to enforce the immigration laws. However, they must adopt specific procedures to ensure

that arrest record information is used as an investigative lead, and that any adverse decision based on arrest record information is reviewed at a supervisory level before a final decision is made. The agency's own procedures would specify the appropriate level of review.

A similar statutory authorization is provided for the Treasury Department's Bureau of Alcohol, Tobacco and Firearms, Customs Service, Internal Revenue Service, and Office of Foreign Assets Control which have mixed civil and criminal functions and have specialized needs for criminal justice information in order to carry out their statutory duties. Again, the Treasury Department is required to adopt procedures to prevent the abuse of arrest record information.

The Drug Enforcement Administration of the U.S. Department of Justice would be authorized to disseminate criminal record information (but not arrest record information) to registered drug manufacturers. The manufacturers themselves are not authorized to obtain the information from any other source except public records.

Section 204 (g) requires agencies to adopt procedures relating to research access to arrest record information, criminal record information and correctional and release information. Agencies are not required to permit research by outside sources, but if they do not, this must be specified. If research is permitted, specific agreements must be entered

into between the agency and the reseacher insuring the confidentiality and security of the information and providing sanctions for the violation of the agreement.

Subsection (h) recognizes that there are some private organizations which, by agreement with criminal justice agencies, perform criminal justice functions. For example, the VERA Institute performs the bail agency functions for the City of New York by agreement with the city. It permits these organizations to obtain criminal justice information through the criminal justice agency with which they have an agreement. The agreement must restrict the use of the information and insure its security and confidentiality, provide for adequate record keeping, and require termination of the agreement for failure to comply with these requirements.

Announcement of arrest, convictions and similar stages of the criminal justice process to the press is allowed under subsection (i) as are announcements of the correctional status of an individual, e.g. on furlough, on parole, etc., and new developments in the course of an investigation. These announcements must be related, however, to events that are on-going, rather than to past history. Thus, the announcement of an arrest should be made within a few days of its occurance, not five years later. While past criminal history is not to be volunteered to the public, it is permissible for a ciriminal justice agency to confirm certain matters of public record information upon specific

inquiry. If the press, or any member of the public should inquire directly, "Was Joe Smith arrested by your Department on July 15, 1941," and that fact can be ascertained from a police blotter or similar record of entry, a criminal justice agency may confirm it.

Section 205 authorizes the dissemination of criminal justice information for certain employment purposes. Such information may be exchanged among criminal justice agencies in connection with the employment of individuals by those agencies. Similarly, information may be provided to the nominating, confirming or appointing authority of Federal, State or local government in connection with the appointment of criminal justice agency executives, judges, or members of the Commission on Criminal Justice Information which would be established by the bill. With respect to general employment in criminal justice agencies, there is a requirement that the individuals be put on notice, that such information will be sought, either in the application form itself or by general notice. In the case of nominees or appointees, however, a written consent to be considered for the position and have criminal justice information obtained in connection therewith is required.

Section 205(b) is the specific statutory authorization for access to criminal justice information in connection with federal employment and security clearances. It requires

that any adverse information obtained be considered as disqualifying only where it is reasonably related to employment and that decisions unfavorable to the individual because of such information be considered at the supervisory level. The agency receiving the information must adopt regulations to implement these requirements. In addition, a general notice to the individual that such information may be sought is also required.

Subsection (c) retains the existing statutory authority to provide information to federally chartered or insured financial institutions for employment review purposes but restricts this to criminal record information. Mere arrests may not be disclosed to these institutions.

Section 206 prohibits anyone who obtains criminal justice information from further disseminating it to unauthorized persons. Thus, the pharmacists licensing board which has statutory authority to obtain criminal justice information may not pass that information on to a barber's licensing board that does not have a similar statute. An exception is made to permit rehabilitation officials to summarize criminal record information or correctional and release information for a prospective employer or others if this will assist the subject of the record and he consents. For example, a parole official assisting a convict about to be released in securing employment may summarize the convict's prison record to a prospective employer in order to help

obtain employment. The record itself may not be disseminated, however.

Under section 207, each criminal justice agency is required to adopt procedures to provide security for criminal justice information, assure the continued accuracy of arrest record and criminal record information, pass on additions or corrections in information to other agencies that have received the original record, provide audit trails and periodic review of compliance with the requirements of the bill. Where necessary, however, records accumulated prior to the effective date of the bill may be exempted because of the impracticability of compliance with these requirements.

Section 207(c) requires that arrest record and criminal record information be sealed or purged in accordance with otherwise applicable statutes or in compliance with court orders. This provision is a recognition of existing law and practice and does not in itself create any new authority to seal or purge records. It does, however, require that the agency charged with the responsibility of implementing the statute or complying with the court order provide notice to other agencies having the record of the sealing or purging requirement.

Subsection (d) is an affirmative purging requirement. It obligates the central repositories of records, such as the FBI or the state identification bureau, to expunge those arrest records which are five years old if there

is no disposition and no subsequent arrest. Where the individual is a fugitive, however, expungement is not required.

Section 208 establishes the right of an individual to examine his own arrest record or criminal record for the purpose of correction. Criminal justice agencies maintaining such records are required to adopt and publish regulations which specify how the individual can inspect his record. These regulations must provide for mutually convenient access. The individual does not have a right to inspect his record at any hour of the night or to insist that it be brought to a location of his choice. On the other hand, he can not be made to travel great distances to inspect his record, it must be available at a reasonably convenient location, and he cannot be forced to come to inspect his record only during a specific hour, once a month. Copies need not be provided so long as adequate inspection by the individual or his counsel is afforded.

Any criminal justice agency is required to correct any record which is clearly erroneous. If there is dispute over the correctness of the record, the criminal justice agency receiving the challenge must refer the matter to the agency which originated the record. For example, if there is a challenge to a record held by a state identification bureau but the record was originally entered by the local police,

the challenge should be referred to the local police. The agency originating the record must either correct it, if it finds it clearly erroneous, or conduct a hearing at which the dispute over its accuracy can be settled. The subject of the record may appear at such a hearing with counsel, present evidence, and cross-examine any witnesses. Records found to be inaccurate, incomplete, or improperly maintained (e.g. subject to the expungement requirement described above) must be corrected or deleted. This section deals only with the accuracy and completeness of a given record. It does not create a remedy or procedure by which an individual can challenge the legality of an arrest or charge.

Records must be kept by a criminal justice agency showing all noncriminal justice agencies to which they have been disseminated. These records are available to the subject of the information. Moreover, if a record is corrected, the correction must be passed on to all noncriminal justice agencies which have formerly received it.

The individual's right to access to his own record is for his own benefit. He may not be required to show copies of that record to prospective employers, licensing boards or others.

Section 209 contains special provisions relating to criminal justice intelligence and investigative information. It specifies that such information may be collected only for

official purposes and that it must be kept in a physically secure environment. It may not be included in arrest record or criminal record information files, which, under the terms of the bill, are more readily accessible. On the other hand, there is no prohibition against including arrest record or criminal record information in intelligence or investigative files.

Each criminal justice agency must adopt internal operating procedures to ensure that only those persons who have a need to know or have access to criminal justice investigative or intelligence information, either within the agency or in other agencies, are able to obtain it. When such information is disseminated to persons in another agency, records must be kept of the agency and individuals having access, the date of the access, and (unless obvious) the purpose of the access. For example, if the Secret Service should request access to intelligence files concerning persons who have threatened the President, the purpose would be evident from the request itself. On the other hand, a request from another criminal justice agency for intelligence information for employment screening purposes should be noted as such.

Subsection (c) prohibits direct terminal access to automated criminal justice intelligence or investigative information by other agencies unless this is directly authorized by statute or executive order. An exception is made, however, for the sharing of automated intelligence or investigative

information by various components of a single executive department. It should be noted that where control of a remote access terminal is in an employee of the agency which maintains the information he may disseminate it manually to those who are otherwise authorized to receive it. The restriction in the bill is on automated transfers of information, it does not prevent an index or pointer system which merely refers an inquiry to another agency so long as the information itself is not transmitted by computer.

Where a statute or rule or order of a court mandates dissemination of criminal justice intelligence or investigative information it is, of course, permitted.

Subsection (e) permits a criminal justice agency to provide an assessment of criminal justice intelligence or investigative information to anyone when necessary to avoid possible danger to persons or property. Thus, it would always be permissible to indicate to a bank president that information concerning the bombing of the building has been received. Such assessments are merely necessary summaries, however, and actual transfer of intelligence or investigative files would not be authorized.

Disclosure of intelligence or investigative information by one who has obtained it in his official capacity contrary to a duty imposed by this or other statutes or by agency regulations would be a criminal offense. For example, an

officer or employee, having knowledge of this duty, who disseminates information to an unauthorized person for the purpose of discrediting a candidate for public office, or for personal or monetary reward, is guilty of a misdemeanor.

Title III establishes the enforcement mechanisms for the bill.

Section 301 establishes a Commission on Criminal Justice Information composed of nine members. Three members will be representative of Federal criminal justice agencies and will be designated by the President. The President will appoint with the advice and consent of the Senate four members who are representative of state and local criminal justice agencies. The other two members, appointed by the President with the advice and consent of the Senate, will represent the public at large. Members will serve for staggered three year terms except that the federal representatives serve at the will of the President. A Chairman and Vice Chairman would be designated by the President from among the members of the Commission. Five members constitute a quorum.

The Commission is empowered to study and collect information concerning agency compliance with the provisions of the bill, with particular emphasis on the security, confidentiality and accuracy of arrest and criminal record information. It would appraise the various laws, policies and practices in the criminal justice information area and would investigate specific complaints, under oath, of violations of the provisions

of the bill. The Commission would publish annually a compendium of criminal justice information systems regulated by the bill, obtaining the necessary information from the criminal justice agencies.

Annual reports on compliance with the provisions of the bill and containing any further legislative recommendations would be made by the Commission to Congress and the President. In addition, the Commission has the authority to submit interim reports and recommendations to the President or the Chief Executive of any state calling attention to problems it has identified or suggesting changes in law or procedures.

The Commission has the authority to conduct hearings anywhere in the country on matters within its jurisdiction, and may act through subcommittees if it wishes. It has the necessary powers to subpoena witnesses and administer oaths, and witness fees are provided. Subpoenas of the Commission would be enforceable through the courts. Necessary criminal justice information could, of course, always be disseminated to the Commission despite other restrictions on dissemination.

Commission members, other than the federal members, would be compensated at Level IV of the Federal Executive Salary Scale when actually employed in Commission work, and would be entitled to the necessary travel expenses.

Section 305 provides for a full-time staff director, appointed by the President with the advice and consent of the Senate, after consultation with the Commission. He would be

appointed subject to the Civil Service laws.

The Commission has authority to constitute advisory committees and fix their duration. It is also free to consult with any others it wishes. Members of the Commission and its advisory committees would be "special government employees" within the meaning of the conflict of interest laws.

Section 306 requires each criminal justice agency to advise its personnel of the provisions of the bill and of any disciplinary sanctions available for violation of the bill or agency procedures. It must also adopt procedures to ensure that other agencies or persons receiving access to information are aware of whatever administrative sanctions may be available by law for noncompliance with the provisions of the bill.

Section 307 provides judicial remedies for violations of the bill. A civil action against an agency is authorized if an individual is denied his right of inspection of records or an agency improperly refuses to correct a record. Similarly, an individual has a civil action against an agency or individual who injures him by violating the act, and may sue either or both. Suits naming both individuals and agencies must be brought in a single action. Suits against federal officials must be brought in federal court but suits against state or local officials may be brought in either state or federal court. Equitable relief is authorized as are damages. In egregious cases, punitive or exemplary damages may be awarded. Costs

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and attorneys fees may also be awarded.

Section 307(f) makes good faith a defense to damage actions but not to equitable relief.

Section 307(g) makes it clear that the bill creates no new exclusionary rules. Evidence otherwise admissible in court may not be excluded in a civil or criminal proceedings merely because it is connected with some violation of the exchange, dissemination or use restrictions in the bill.

Section 308 provides state consent to suit.

Section 309 recognizes the state laws which may provide greater restrictions on information exchange or greater protections of privacy. These laws continue in effect and are not supplanted by the bill. Within its boundaries, a state may insist upon the more restrictive provisions of state law and neither federal agencies nor agencies of other states may demand access to information on the basis of their statutes or executive orders. If a state transmits its information to a federal agency or through interstate channels, however, that information is governed solely by federal law. State laws do not follow the information beyond state boundaries.

Section 310 authorizes the necessary appropriations.

Section 311 repeals the so-called "Bible rider" which presently governs exchanges of information between the FBI and noncriminal justice agencies on the state or local level.

Section 312 delays the effective date of the bill for

two years in order to permit time for the development of state law and agency regulations. The appropriations authorization and provisions creating the Commission would be effective immediately, however.

IN THE SENATE OF THE UNITED STATES

Mr. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

introduced the following bill; which was read twice and referred to the Committee on  
\_\_\_\_\_

**A BILL**

To provide for the security, accuracy and confidentiality of criminal justice information and to protect the privacy of individuals to whom such information relates, and for other purposes.  
(Insert title of bill here)

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled, that*  
this Act may be cited as the "Criminal Justice Information  
Control and Protection of Privacy Act of 1974."

TITLE I - PURPOSE AND SCOPE.

Section 101. Findings. The Congress hereby finds  
and declares that:

(a) The responsible exchange of complete  
and accurate criminal justice information among criminal  
justice agencies is recognized as necessary and indispensable  
to effective law enforcement and criminal justice and is  
encouraged.

(b) Individual rights, however, may be infringed if information is inaccurate, incomplete, or is disseminated irresponsibly.

(c) While the enforcement of criminal laws and the regulation of criminal justice information systems is primarily the responsibility of state and local government, the Federal Government has a substantial and interconnected role.

(d) This Act is based on the powers of the Congress--

(1) to place reasonable restrictions on Federal activities and upon state and local governments which received Federal grants or other Federal services or benefits, and

(2) to facilitate and regulate interstate commerce.

Section 102. Definitions. As used in this Act--

(1) "Arrest and information" means notations of the arrest, detention, indictment of, or filing of an information, or other formal criminal charge against an individual, made by a criminal justice agency which do not include a disposition.

(2) "Automatic" means utilizing electronic computers or other automatic data processing equipment, as distinguished from performing operations manually.

(3) "Correctional and release information" means information on an individual compiled by an agency in connection with bail, pretrial or post-trial release proceedings, reports on the physical or mental condition of an alleged offender, reports on presentence investigations, reports on inmates in correctional institutions or participants in rehabilitation programs, and probation and parole reports.

(4) "Criminal record information" means information compiled by a criminal justice agency on an individual consisting of notations of arrest, detention, indictment,

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(5) "Criminal justice activities" means activities of a criminal justice agency relating to protection against, detection of, or investigation of criminal offenses, or to the apprehension, detention, pretrial release, post-trial release, prosecution, defense, correctional supervision, or rehabilitation of accused persons or criminal offenders, adjudication of a charge, or processing requests for executive clemency.

(6) "Criminal justice agency" means a court or any other Governmental agency or subunit thereof which as its principal function performs criminal justice activities and any other agency or subunit thereof which performs criminal justice activities but only to the extent that it does so.

(7) "Criminal justice information" includes arrest record information, criminal record information, correctional and release information, criminal justice intelligence information and criminal justice investigative information.

(8) "Criminal justice intelligence information" means information collected by a criminal justice agency with respect to an identifiable individual or groups of individuals in an effort to anticipate, prevent, or monitor possible criminal activity.

(9) "Criminal justice investigative information" means information with respect to an identifiable individual compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including information derived from reports of investigators or informants, or from any type of surveillance.

(10) "Disposition" means that (A) criminal proceedings have been concluded; (B) a law enforcement agency has elected not to refer a matter for prosecution; (C) a prosecutor has elected not to commence criminal proceedings; or (D) criminal proceedings have been indefinitely postponed.

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"Disposition" includes but is not limited to, acquittal,

(5) "Criminal justice" refers to the activities of a criminal justice agency against, detection of, or investigation of criminal offenses, or to the apprehension, detention, pretrial release, post-trial release, prosecution, defense, correctional supervision, or rehabilitation of accused persons or criminal offenders, adjudication of a charge, or processing requests for executive clemency.

(6) "Criminal justice agency" means a court or any other Governmental agency or subunit thereof which as its principal function performs criminal justice activities and any other agency or subunit thereof which performs criminal justice activities but only to the extent that it does so.

(7) "Criminal justice information" includes arrest record information, criminal record information, correctional and release information, criminal justice intelligence information and criminal justice investigative information.

(8) "Criminal justice intelligence information" means information collected by a criminal justice agency with respect to an identifiable individual or groups of individuals in an effort to anticipate, prevent, or monitor possible criminal activity.

(9) "Criminal justice investigative information" means information with respect to an identifiable individual compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including information derived from reports of investigators or informants, or from any type of surveillance.

(10) "Disposition" means that (A) criminal proceedings have been concluded; (B) a law enforcement agency has elected not to refer a matter for prosecution; (C) a prosecutor has elected not to commence criminal proceedings; or (D) criminal proceedings have been indefinitely postponed.

"Disposition" includes but is not limited to acquittal,

acquittal by reason of insanity or mental incompetence, case-

continued without finding, charge dismissed, charge  
dismissed due to insanity or mental incompetence, charge  
still pending due to insanity or mental incompetence,  
guilty plea, nolle prosequi, no paper, nolo contendere  
plea, convicted, deceased, deferred disposition, dismissed-  
civil action, extradited, found insane or incompetent,  
pardoned, probation before conviction, sentence commuted,  
adjudication withheld, mistrial-defendant discharged.

(11) "Executive Order" means an order of the President of the United States or the Chief Executive of a State which has the force of law and which is published in a manner permitting regular public access thereto.

(12) "Law enforcement agency" means a criminal justice agency which is empowered by law to make arrests.

(13) "State" includes any of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

#### APPLICABILITY

Section 103 (a). This Act applies to any criminal justice agency--

- (1) of the Federal government,
- (2) of a State or local government which is funded in whole or in part by the Federal government,
- (3) which exchanges information interstate, and
- (4) which exchanges information with an agency covered by paragraphs (1), (2) or (3) but only to the extent of that exchange.

(b) The provisions of this Act do not apply to--

- (1) original records of entry such as police blotters maintained by criminal justice agencies, indexed chronologically and permitted by law to be made public, if such records are organized on a chronological basis,
- (2) court records of public criminal proceedings,
- (3) public criminal proceedings and court opinions, including published compilations thereof,

(4) records of traffic offenses disseminated to or maintained by departments or transportation, motor

vehicles or the equivalent, primarily for the purpose of regulating the issuance, suspension, revocation or renewal of drivers' or other operators' licenses,

(5) records relating to violations of the Uniform Code of Military Justice but only so long as those records are maintained solely within the Department of Defense,

(6) statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable,

(7) announcements of executive clemency, or

(8) criminal justice intelligence information or criminal justice investigative information specifically required by Federal Executive Order to be kept secret in the interest of national defense or foreign policy.

## TITLE II - COLLECTION, DISSEMINATION AND USE OF CRIMINAL JUSTICE INFORMATION

### USE OF INFORMATION BY CRIMINAL JUSTICE AGENCIES

Section 201 (a). Criminal justice information shall be exchanged, disseminated and used only in the manner provided by this Act. Criminal justice agencies may exchange criminal justice information among themselves for criminal justice purposes, consistent with the provisions of this Act. To secure these objectives, each criminal justice agency, after notice and an opportunity for public comment, shall promulgate and publish regulations which--

(1) specify the type of criminal justice information systems maintained,

(2) require compliance with the provisions of this Act and regulations and procedures established pursuant thereto,

(3) specify limits on dissemination, exchange and use of criminal justice information, and

(4) provide appropriate sanctions for noncompliance with the provisions of this Act and regulations and procedures adopted pursuant thereto.

(b) Each criminal justice agency shall adopt internal operating procedures reasonably designed to--

(1) prevent unauthorized access to, or dissemination of, criminal justice information; and

(2) ensure that correctional and release information is disseminated only to (A) criminal justice agencies, (B) the individual to whom the information pertains, or his attorney, when authorized by Federal or State statute, court rule or court order, or (C) individuals authorized to receive it under Sections 205 and 206.

(c) A law enforcement agency shall adopt procedures reasonable designed to ensure that arrest record information which is accessed for the purpose of developing investigative leads concerning an individual who has not yet been arrested, does not, without additional information, provide the basis for a subsequent detention or arrest. If the arrest record information is obtained from another criminal justice agency, a record is required as to the identity of the requesting officer, the information obtained, the purpose of the request for information, and the use of the information. These records shall be maintained for a minimum of three years and shall be reviewed by the requesting agency periodically to ensure compliance with this subsection.

(d) Information contained in a criminal justice information system which was obtained from a foreign government or international organization is subject to the same restrictions and limitations on use as information in the system obtained from domestic sources. Criminal justice information may be exchanged with foreign governments or international organizations pursuant to treaties or formal or informal agreements. Whenever such information is exchanged with a foreign government or international organization, such government or organization should be encouraged to use it in a manner consistent with the purposes of this Act.

fingerprints and photographs may be used or disseminated for any official purpose but identification information which includes arrest record information or criminal record information may be disseminated only as permitted by this Act. Information that a person is wanted for a criminal offense and that judicial process has been issued against him, together with an appropriate description and other information which may be of assistance in locating the person or demonstrating a potential for violence, may be used or disseminated for any purpose relating to criminal justice. Nothing in this Act prohibits direct access by a criminal justice agency to automated wanted person or stolen property information.

## ACCESS TO AUTOMATED CRIMINAL JUSTICE INFORMATION SYSTEMS

Section 203 (a). Exchanges of criminal justice information between criminal justice agencies by means of automated systems shall be governed by formal written agreements specifying the duration of the agreement, the type of information to be exchanged, the persons having direct access to the information, the security provisions necessary to protect the information, and such other matters as are necessary to ensure compliance with law.

(b) A criminal justice agency shall adopt procedures reasonably designed to ensure that--

(1) whenever feasible, arrest record information or criminal record information in an automated system is accessed on the basis of a specific identification number or other accurate identifier.

(2) whenever arrest record information or criminal record information is accessed by patrol units by means of automated systems, records are required as to the identity of the requesting officer, the information obtained, the purpose of the request and the use of the information

and these records shall be maintained for a minimum of three years.

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Section 204 (a). Criminal record information may be made available for noncriminal justice purposes only as provided in this Act or where authorized by applicable Federal or State statute or Executive Order.

(b) When requested, arrest record information indicating that an indictment, information, or formal charge against an individual has been filed within twelve months of the date of the request therefor, or is still pending, may be made available for a noncriminal justice purpose where authorized by Federal or State statute or Executive Order. Other arrest record information may be made available for a noncriminal justice purpose only as provided in subsections (d) and (e) of this Section and subsections (a) and (b) of Section 205, or when expressly provided in a Federal or State statute. Arrest record information made available as permitted by this subsection may be used only for the purpose for which it was requested, and may not be retained by the requestor beyond the time necessary to accomplish the purpose for which it was sought.

(c) A requestor who is entitled to obtain arrest record information or criminal record information as permitted by subsections (a) or (b), has the obligation to put individuals who may be the subject of such records on notice that such information may be requested.

(d) A criminal justice agency may disseminate criminal justice information, upon request, to officers and employees of the Immigration and Naturalization Service, consular officers, and officers and employees of the Visa Office of the Department of State, who require such information for the purpose of administering the immigration and nationality laws. The Attorney General and the Secretary of State shall adopt internal operating procedures reasonably designed to ensure that arrest record information received pursuant to this subsection is used solely for the purpose of developing further investigative leads and that no

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information unless there has been a review of the decision

(e) A criminal justice agency may disseminate criminal justice information, upon request, to officers and employees of the Bureau of Alcohol, Tobacco and Firearms, the United States Customs Service and Internal Revenue Service and the Office of Foreign Assets Control of the Department of the Treasury, who require such information for the purpose of administering those laws under their respective jurisdictions. The Secretary of the Treasury shall adopt internal operating procedures reasonably designed to ensure that arrest record information received pursuant to this subsection is used solely for the purpose of developing further investigative leads and that no decision adverse to an individual is based on arrest record information unless there has been a review of the decision at a supervisory level.

(f) The Drug Enforcement Administration of the U. S. Department of Justice may disseminate criminal record information to Federally registered manufacturers and distributors of controlled substances.

(g) A criminal justice agency shall adopt procedures relating to access to arrest record information, criminal record information and correctional and release information by individuals and agencies for research, evaluative or statistical activities. Where research is authorized, such procedures shall include the requirement of a formal agreement between the individual or agency performing the research and the criminal justice agency specifically authorizing access to data, limiting the use of the data to research, evaluative or statistical purposes, insuring the confidentiality and security of the data consistent with this Act, and providing sanctions for the violations of this Act or the terms of the agreement.

(h) A nongovernmental organization which performs criminal justice functions within the meaning of this Act is required to undertake a formal agreement with a criminal justice agency. The agreement shall: (1) provide that access to criminal justice information is obtained through the criminal justice agency with which the agreement is made; (2) indicate specifically the type of data to which access is permitted; (3) limit the use of the data to the purpose for which it is sought; (4) insure the confidentiality and security of data; (5) provide for record keeping and review consistent with the provisions of Section 207 (a) (4) and (6) respectively; and (6) provide for termination of the agreement for failure to comply with these requirements.

(i) Nothing in this Act prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates. Nor is a criminal justice agency prohibited from confirming prior arrest record information or criminal record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed, on a specified date, if the arrest record information or criminal record information disclosed is based on data excluded by Section 103 (b) from the application of this Act.

#### ACCESS FOR APPOINTMENTS AND EMPLOYMENT INVESTIGATIONS

Section 205 (a). A criminal justice agency may disseminate criminal justice information--

(1) for the purpose of screening employment applications or reviewing employment for a criminal justice agency,

(2) to a Federal, State or local government official

who is authorized by law to receive such information.

(3) to any legislative body authorized to approve appointments made pursuant to paragraph (2).

Prior to seeking information pursuant to paragraph (1) the employing agency shall put the individual on notice that access to such information will be sought. Information shall be disseminated by a criminal justice agency to an appointing official or legislative body pursuant to paragraphs (2) or (3) only after that agency has received notification from the appointing official that he is considering the individual for such an appointment or nomination or from the legislative body that the individual has been nominated for the office and that the individual has been notified of the request for the information and has consented, in writing, to its release.

(b) A criminal justice agency may disseminate criminal justice information to an agency of the Federal Government for the purpose of an employment application investigation, or the approval or renewal of a security clearance for access to classified information, pursuant to Federal statute or Executive Order. The Federal agency requesting information pursuant to this subsection shall adopt regulations reasonably designed to ensure that if any adverse information is received (1) employment decisions are made only at a supervisory level, and (2) such information is considered as a disqualifying factor only where it is reasonably related to such employment. At the time he files his application, seeks a change of employment status or applies for a security clearance, the individual shall be put on notice that such an investigation will be conducted and that access to this type of information will be sought.

(c) A criminal justice agency may disseminate criminal record information to Federally chartered or insured financial institutions for purposes of employment review.

Section 206 (a). Any agency or person obtaining criminal justice information from another agency or person is prohibited from using that information for any purpose not authorized by law or disseminating that information, directly or through any intermediary, to any other agency or person not authorized by law to receive it.

(b) Rehabilitation officials of criminal justice agencies may, with the consent of the individual under their supervision to whom the information refers, represent the substance of the individual's criminal record or correctional and release information to prospective employers or other persons if the representation is helpful in obtaining employment or health or rehabilitation services for the individual. Copies of such information shall not be disseminated to unauthorized persons or agencies under this subsection.

#### SECURITY, ACCURACY AND UPDATING OF INFORMATION

Section 207 (a). Each criminal justice agency shall adopt procedures reasonably designed to ensure--

(1) the physical security of its criminal justice information systems, including special precautions for patrol cars or patrol units having computer terminals,

(2) the continued accuracy of arrest record information and criminal record information in those systems, including the requirement that arrest records or other records of initiation of criminal charges are followed by a record of disposition within 90 days after the disposition has occurred,

(3) that any additional information (including dispositions), corrections in information, or deletions of information pertinent to the original arrest record information or criminal record information furnished, is promptly disseminated to recipients of that information,

(4) the accurate recording of the identity of persons or agencies requesting arrest record information or criminal record information from the system, the purpose for which the information is requested and the date of the request,

(5) the accurate recording of the sources of arrest record information and criminal record information entered into the system, and

(6) periodic review and audit of compliance with the provisions of this Act.

(b) Procedures adopted pursuant to this section may exempt information entered into a criminal justice information system prior to the effective date of this Act from those provisions of this section that cannot feasibly be applied to such information.

(c) Arrest record information and criminal record information shall be sealed or purged in accordance with the requirements of a Federal or State statute, or an order of a court of competent jurisdiction when appropriate notification is provided by the agency directly responsible for compliance with the order or statute in each instance.

(d) A Federal or State criminal justice agency which is a central repository of arrest record information or criminal record information shall adopt procedures reasonably designed to ensure that arrest record information is expunged when (1) five years have elapsed from the date of the arrest, (2) there has been no subsequent arrest during the five-year period of the same individual, and (3) the individual is not a fugitive.

#### ACCESS BY INDIVIDUALS FOR PURPOSE OF CHALLENGE

Section 208 (a). Upon satisfactory verification of his identity, any individual may inspect, in person or through counsel, arrest record information and criminal record information maintained by a criminal justice agency concerning him, for the purpose of correction, in accordance with procedures adopted by the criminal justice agency.

(b) Each criminal justice agency shall adopt and  
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publish regulations to implement this Section, which  
regulations shall provide--

(1) a reasonable time, place and procedure to be followed by an individual or his counsel in gaining access to arrest record information and criminal record information, and reasonable fees therefor.

(2) that if, on the basis of the inspection of such information, the individual believes such information to be inaccurate, incomplete, or maintained in violation of this Act, he shall have a right to challenge such information in writing and, if there is no factual controversy concerning the allegations in the individual's challenge, the criminal justice agency maintaining the record shall expeditiously correct the record;

(3) that if there is a factual controversy concerning the allegations in the challenge, the agency shall refer the challenge to the agency responsible for entering the information for a determination of the validity of the allegations and, if the latter agency finds that there is a bona fide controversy it shall, upon written request of the individual, provide a hearing on the challenge at which the individual may appear with counsel, present evidence, and examine and cross-examine witnesses;

(4) that any information found after hearing to be inaccurate, incomplete or improperly maintained shall be appropriately corrected or deleted;

(5) that records shall be kept, and provided upon request to the individual, concerning the name and authority of all noncriminal justice agencies to which, and the date on which, such information was disclosed;

(6) that corrections in the information will be automatically transmitted to all agencies which are recorded as having received copies of that information prior to the correction.

(c) No individual who obtains information concerning himself, in accordance with this section, may be required to show or transfer copies of that information as a condition of employment, licensing, or other regulatory measure to any other person or any other governmental or nongovernmental agency or organization.

#### CRIMINAL JUSTICE INTELLIGENCE AND INVESTIGATIVE INFORMATION

Section 209 (a). Criminal justice intelligence information and criminal justice investigative information may be collected by a criminal justice agency only for official purposes. It shall be maintained in a physically secure environment and shall not be included in arrest record information or criminal record information files.

(b) A criminal justice agency shall adopt internal operating procedures designed to ensure--

(1) access to criminal justice intelligence information and criminal justice investigative information within the agency is limited to those officers or employees who require it for the performance of their official duties,

(2) dissemination of criminal justice intelligence information and criminal justice investigative information to other agencies is limited to those officers and employees within the agency who require it for the performance of their official duties and records are maintained for a minimum of three years regarding such dissemination, including the identity of the agency and persons within the agency to whom it was disseminated, the date of dissemination, and the purpose for which disseminated unless otherwise apparent.

(c) Direct terminal access to automated criminal justice intelligence information or criminal investigative information shall not be permitted outside the agency which stores such information except where authorized by Federal or State statute or Executive Order. This subsection does not limit the lawful exchange of criminal justice intelligence information or criminal justice investigative information among agencies within a single executive department by means of an automated criminal justice information system designed for the use of

(d) Criminal justice investigative and criminal justice intelligence information may be made available pursuant to Federal or State statute, or a rule or order of a court of competent jurisdiction.

(e) An assessment of criminal justice intelligence information or criminal justice investigative information may be provided to any individual when necessary to avoid possible danger to persons or property.

(f) A person is guilty of a misdemeanor if, in knowing violation of a specific duty imposed upon him as an officer or employee or former officer or employee of a governmental agency by statute, or by a regulation, rule or order issued pursuant thereto, he discloses criminal justice intelligence information or criminal justice investigative information, to which he has or had access in his official capacity, to a person not authorized by law to receive such information. The offense shall be punishable by imprisonment not to exceed one year, a fine not to exceed \$10,000, or both.

### TITLE III

#### ADMINISTRATION AND ENFORCEMENT

##### COMMISSION ON CRIMINAL JUSTICE INFORMATION

Section 301 (a). There is hereby established in the executive branch of the Government a Commission on Criminal Justice Information (hereinafter the "Commission").

(b) The Commission shall be composed of nine members. Three of the members of the Commission shall be representatives of Federal criminal justice agencies designated by the President. The remaining six members of the Commission shall be appointed by the President by and with the advice and consent of the Senate. Four of the appointed members shall be representative of State or local criminal justice agencies and the other two shall be representative of the public at large. Not more than five of the members at any one time shall be of the same political party.

Vice Chairman who shall act as Chairman in the absence or  
disability of the Chairman, or in the event of a vacancy  
in that office.

(d) Designated members of the Commission shall serve at the will of the President. Appointed members shall serve for a term of three years except that of the members first appointed, two shall be for a term of one year, two for a term of two years, and two for a term of three years. A member whose term has expired shall serve until his successor is appointed. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment or designation was made.

(e) Five members of the Commission shall constitute a quorum.

#### POWERS AND DUTIES

Section 302 (a). The Commission shall have the power to--

(1) study and collect information concerning (A) the security, confidentiality and accuracy of arrest record information and criminal record information, and (B) the compliance of criminal justice agencies with the provisions of this Act.

(2) appraise the laws, policies and practices of Federal, State and local governments with respect to criminal justice information systems;

(3) investigate allegations, made in writing and under oath; that there has been a failure to comply with the provision of this Act; and

(4) require from each criminal justice agency information necessary to compile a directory of criminal justice information systems subject to this Act and publish annually a directory identifying all such systems and the nature, purpose and scope of each.

(b) The Commission shall report annually to the President and to the Congress with respect to compliance with this Act and concerning such recommendations as it

(c) The Commission may submit such interim reports and recommendations to the President or to the Chief Executive of any State.

#### HEARINGS AND WITNESSES

Section 303 (a). The Commission or, on authorization of the Commission, any subcommittee of three or more members may hold such hearings and act at such times and places as necessary to carry out the provisions of this Act. Hearings shall be public except to the extent that the hearings or portions thereof are closed by the Commission or a subcommittee thereof in order to protect the privacy of individuals or the security of information protected by this Act.

(b) Each member of the Commission shall have the power and authority to administer oaths or take statements from witnesses under affirmation, at hearings of the Commission or any subcommittee.

(c) A witness attending any session of the Commission shall be paid the same fees and mileage paid witnesses in the courts of the United States. Mileage payments shall be tendered to the witness upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

(d) Subpoenas for the attendance and testimony of witnesses or the production of written or other matter, required by the Commission for the performance of its duties under this Act, may be issued in accordance with rules of procedure established by the Commission and may be served by any person designated by the Commission.

(e) In case of contumacy or refusal to obey a subpoena any district court of the United States or the United States court of any territory or possession, within the jurisdiction of which the person subpoenaed resides or is domiciled or transacts business, or has appointed an agent for the receipt of service of process, upon application of the Attorney General of the United States, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce pertinent, relevant

and nonprivileged evidence if so ordered, or there to give testimony touching the matter under investigation and any failure to obey such order of the court may be punished as contempt.

(f) Nothing in this Act prohibits a criminal justice agency from furnishing the Commission information required by it in the performance of its duties under this Act.

#### COMPENSATION OF MEMBERS

Section 304 (a). Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at Level IV of the Federal Executive Salary Schedule, pursuant to Section 5315 of Title 5, prorated on a daily basis for each day spent in the work of the Commission, and shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with Section 5703 of Title 5.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with Sections 5701, 5702 and 5704-5708 of Title 5.

#### DIRECTOR AND STAFF

Section 305 (a). There shall be a full-time staff director for the Commission who shall be appointed by the President by and with the advice and consent of the Senate and who shall receive compensation at the rate provided for Level V of the Federal Executive Salary Schedule, pursuant to section 5316 of Title 5. The President shall consult with the Commission before submitting the nomination

of any person for appointment as staff director. Within the  
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limitation of appropriations, the Commission may appoint  
such other personnel as it deems advisable, in accordance  
with the civil service and classification laws, and may  
procure services as authorized by section 3109 of Title 5,  
but at rates for individuals not in excess of the daily  
equivalent paid for positions at the maximum rate for  
GS-18 of the General Schedule under section 5332 of  
Title 5.

(b) The Commission may constitute and fix the  
duration of advisory committees within States composed of  
citizens of that State and may consult with Governors,  
Attorneys General, and other representatives of State and  
local governments, and with private organizations as it  
deems advisable.

(c) Members of the Commission and members of  
advisory committees constituted pursuant to subsection  
(b) of this section, shall be considered "special  
government employees" within the meaning of section 202(a)  
of Title 18, notwithstanding the number of days actually  
employed in the work of the Commission.

#### ADMINISTRATIVE SANCTIONS

Section 306. Each criminal justice agency shall  
adopt procedures reasonably designed to ensure--

(a) that its personnel are advised of the provisions  
of this Act and of disciplinary actions that may be taken  
for violations of this Act or procedures established  
thereunder;

(b) that other agencies receiving access to  
information pursuant to this Act are notified that misuse  
of information obtained may subject them to administrative  
sanctions including the termination of any future  
access; and

(c) that other persons receiving access to  
information pursuant to this Act are notified that misuse  
of information obtained may subject them to administrative  
sanctions including the termination of any future  
access to information.

Section 307 (a). An individual who is denied access to information concerning him in violation of section 208 or who seeks review of a final agency decision refusing to correct or delete information as provided in section 208 may bring a civil action against the responsible agency.

(b) An individual with respect to whom information has been maintained, disseminated or used in violation of this Act or implementing procedures of an agency may bring a civil action against the individual or agency responsible for the alleged violation. If relief is sought against both an individual and an agency responsible for the alleged violation, such relief shall be sought in a single action.

(c) (1) If a defendant in an action brought under this section is an officer or employee or agency of the United States, the action shall be brought in an appropriate United States district court.

(2) If the defendant or defendants in an action brought under this section are private persons or officers or employees or agencies of a State or local government, the action may be brought in an appropriate United States district court or in any other court of competent jurisdiction.

(d) The district courts of the United States shall have jurisdiction over actions described in this section without regard to the amount in controversy.

(e) A prevailing plaintiff in an action brought under this section may be granted equitable relief, including injunctive relief, and actual damages, and may be awarded costs and reasonable attorney fees. In appropriate cases, a prevailing plaintiff may also be awarded exemplary damages.

(f) Good faith reliance upon the provisions of this Act or of applicable law governing maintenance, dissemination, or use of criminal justice information, or upon rules, regulations or procedures adopted by an agency in implementation of this Act or other applicable law, shall constitute a complete defense to a civil damage action brought under this section but shall not constitute a defense with respect to equitable relief.

(g) Nothing in this Act or in any regulations or procedures adopted pursuant thereto shall provide the basis for the exclusion of otherwise admissible evidence in any proceeding before a court, parole authority or other official body.

#### CONSTENT TO SUIT

Section 308. Any State or local agency which operates or participates in a criminal justice information system subject to this Act shall comply with the provisions of this Act and shall be deemed to have consented to the bringing of actions pursuant to section 307.

#### EFFECT ON STATE LAW

Section 309. Nothing in this Act is to be construed as diminishing greater rights of privacy or protection provided by a State law or regulations governing use, or updating of criminal justice information within that State. Use of information in interstate systems or the use of information obtained through interstate transfer shall be governed solely by this Act.

#### APPROPRIATIONS AUTHORIZED

Section 310. There are hereby authorized to be appropriated such funds as are necessary for the purpose of carrying out the provisions of this Act.

REPEALER

Section 311. The second paragraph under the heading entitle "Federal Bureau of Investigation; Salaries and Expenses" contained in the "Department of Justice Appropriations Act, 1973" is hereby repealed.

EFFECTIVE DATE

Section 312. The provisions of this Act shall take effect upon the first day of the twenty-fifth month following the date of enactment, except that sections 301 through 305 and section 310 shall be effective immediately.